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LEASE AGREEMENT

INTERSTATE COMMERCE COMMISSION

THIS LEASE AGREEMENT, made as of this 20TH day of DECEMBER, 1978, between the BRAE CORPORATION, a Delaware corporation, Three Embarcadero Center, San Francisco, California 94111 ("BRAE"), as Lessor, and MICHIGAN INTERSTATE RAILWAY COMPANY, a Michigan corporation ("Lessee"), as Lessee.

1. Scope of Agreement

A. BRAE agrees to lease to Lessee, and Lessee agrees to lease from BRAE, freight cars as set forth in any lease schedules executed by the parties concurrently herewith or hereafter and made a part of this Agreement. The word "Schedule" as used herein includes the Schedule or Schedules executed herewith and any additional Schedules and amendments thereto, each of which when signed by both parties shall be a part of this Agreement. The scheduled items of equipment are hereinafter called collectively the "Cars".

B. It is the intent of the parties to this Agreement that BRAE shall at all times be and remain the lessor of the Cars. Lessee agrees that it will at no time take any action or file any document which is inconsistent with the foregoing intent and that it will take such action and execute such documents as may be necessary to give effect to this intent.

2. Term

A. This Agreement shall remain in full force until it shall have been terminated as to all of the Cars as provided herein. The lease pursuant to this Agreement with respect to each Car shall commence when such Car has been delivered, as provided in Section 3A hereof, and shall continue until fifteen (15) years (the "initial lease term") have expired from the actual date of delivery, as provided in Section 3A hereof, for the last of the Cars described on the Schedule on which such Car is described.

B. If this Agreement has not been earlier terminated and no default has occurred and is continuing, it shall automatically be extended for not more than five consecutive periods of twelve months each (the "extended lease term") with respect to all of the Cars described on each Schedule, provided, however, that BRAE or Lessee may terminate this Agreement as to all, but not fewer than all, of the Cars on any Schedule by written notice delivered to the other not less than twelve months prior to the end of the initial lease term or any extended lease term.

3. Supply Provisions

A. BRAE will inspect each of the Cars tendered by the manufacturer for delivery to Lessee. Prior to such inspection, however, Lessee shall confirm in writing to BRAE that the sample Car which will be made available for Lessee's inspection prior to the commencement of deliveries conforms to the specifications of the equipment agreed to by Lessee. Upon such approval by Lessee and BRAE's determination that the Car conforms to the specifications ordered by BRAE and to all applicable governmental regulatory specifications, and if this Agreement has not been terminated, BRAE will accept delivery thereof at the manufacturer's facility and shall notify Lessee in writing of such acceptance. Each of the Cars shall be deemed delivered to Lessee upon acceptance by BRAE. The Cars shall be moved to Lessee's railroad line at no cost to Lessee as soon after acceptance of delivery by BRAE as is consistent with mutual convenience and economy. Due to the nature of railroad operations in the United States, BRAE can neither control nor determine when the Cars leased hereunder will actually be available to Lessee for use on its railroad tracks. Notwithstanding that Lessee may not have immediate physical possession of a Car, the lease hereunder with respect thereto shall commence upon acceptance by BRAE from the manufacturer, and Lessee agrees to pay to BRAE the rent for such Car set forth in this Agreement effective therewith. BRAE agrees to assist Lessee in monitoring Car movements and, when deemed necessary by Lessee and BRAE, to issue movement orders with respect to such cars to other railroad lines in accordance with ICC and AAR interchange agreements and rules.

B. Lessee agrees that so long as it shall have on lease any Cars, it shall not lease freight cars from any other party until it shall have received all of the Cars on the Schedule or Schedules. If the utilization of the Cars, as defined in Section 6A(i), falls below 80 percent, Lessee shall give preference to BRAE and shall load the Cars leased from BRAE prior to loading freight cars of the same classification leased from other parties or purchased by Lessee subsequent to the date of this Agreement or interchanged with railroads; provided, however, that this shall in no event prevent or prohibit Lessee from fulfilling its obligations to provide transportation and facilities upon reasonable request therefor to shippers on its railroad tracks or impair significantly the ability of the railroad to operate in an efficient manner.

C. Lessee may lease up to 200 additional Cars from BRAE upon the same terms and conditions of this Agreement, except as provided in 6A(ii). To receive Cars prior to March 31, 1980, such right shall be exercisable through September 30, 1979. Such additional Cars shall be identified in Schedules to this Agreement and shall benefit from and be subject to this Agreement upon execution of the Schedules by BRAE and Lessee. Notwithstanding the execution of any Schedules, including Schedules for additional Cars, the delivery

of any Car to Lessee shall be subject to manufacturer's delivery schedules, the availability of financing on terms satisfactory to BRAE and the mutual acknowledgement of the parties that the addition of such Cars is not likely to reduce Utilization (as defined in Section 6A hereof) of all Cars on lease to Lessee to less than 86.25 percent in any calendar year. If, due to any of the factors listed in the preceding sentence, fewer than all of the Cars listed on a Schedule shall be delivered to Lessee, the initial lease term shall terminate fifteen (15) years from the date on which the final Car of the most recent group of Cars was delivered, as provided in Section 3A hereof.

#### 4. Railroad Markings and Record Keeping

A. BRAE and Lessee agree that on or before delivery of any Cars to Lessee, said Cars will be lettered with the railroad markings of Lessee and may also be marked with the name and/or other insignia used by Lessee. BRAE and Lessee further agree that any Car may also be marked with the name of BRAE and any other information required by an owner or secured party under a financing agreement entered into by BRAE in connection with the acquisition of such Car. All such names, insignia and other information shall comply with all applicable regulations.

B. At no cost to Lessee, BRAE shall during the term of this Agreement prepare for Lessee's signature and filing all documents relating to the registration, maintenance and record keeping functions involving the Cars. Such documents shall include but are not limited to the following: (i) appropriate AAR documents, including an application for relief from AAR Car Service Rules 1 and 2; (ii) registration in the Official Railway Equipment Register and the Universal Machine Language Equipment Register, and (iii) such reports as may be required from time to time by the ICC and/or other regulatory agencies.

C. Each Car leased hereunder shall be registered at no cost to Lessee in the Official Railway Equipment Register and the Universal Machine Language Equipment Register. Lessee shall, on behalf of BRAE, perform all record keeping functions related to the use of the Cars by Lessee and other railroads in accordance with AAR railroad interchange agreements and rules, such as car hire reconciliation. Correspondence from railroads using such Cars shall be addressed to Lessee at such address as BRAE or Lessee shall select.

D. All record keeping performed by Lessee hereunder and all record of payments, charges and correspondence related to the Cars shall be separately recorded and maintained by Lessee in a form suitable for reasonable inspection by BRAE from time to time during regular Lessee business hours. Lessee shall supply BRAE with such reports, including daily telephone reports of the number of Cars on Lessee's tracks, regarding the use of the Cars by Lessee on its railroad line as BRAE may reasonably request.

## 5. Maintenance, Taxes and Insurance

A. Except as otherwise provided herein, BRAE will pay all costs, expenses, fees and charges incurred in connection with the use and operation of each of the Cars during its lease term and any extension thereof, including but not limited to repairs, maintenance and servicing, unless the same was occasioned by the fault of Lessee. Lessee shall inspect all Cars interchanged to it to insure that such Cars are in good working order and condition and shall be liable to BRAE for any repairs required for damage not noted at the time of interchange. Lessee hereby transfers and assigns to BRAE all of its right, title and interest in any warranty in respect of the Cars. All claims or actions on any warranty so assigned shall be made and prosecuted by BRAE at its sole expense and Lessee shall have no obligation to make any claim on such warranty. Any recovery under such warranty shall be payable solely to BRAE.

B. Except as provided above, BRAE shall make or cause to be made such inspections of, and maintenance and repairs to, the Cars as may be required. Upon request of BRAE, Lessee shall perform any necessary maintenance and repairs to Cars on Lessee's railroad tracks as may be reasonably requested by BRAE. BRAE shall also make, at its expense, all alterations, modifications or replacement of parts as shall be necessary to maintain the Cars in good operating condition throughout the term of the lease of such Cars. Lessee may make running repairs, at BRAE's expense, to facilitate continued immediate use of the Cars, but shall not otherwise make any repairs, alterations, improvements or additions to the Cars without BRAE's prior written consent. Lessee shall be liable to BRAE for any revenues lost due to any unauthorized alteration. Title to any such alteration, improvement or addition shall be and remain with BRAE.

C. Lessee will at all times while this Agreement is in effect be responsible for the Cars while on Lessee's railroad tracks in the same manner that Lessee is responsible under Rule 7 of the AAR Car Service and Car Hire Agreement Code of Car Service Rules-Freight for freight cars not owned by Lessee on Lessee's railroad tracks. Lessee shall protect against the consequences of an event of loss involving the Cars while on Lessee's railroad tracks by obtaining insurance. Lessee shall furnish BRAE, concurrently with the execution hereof and thereafter at intervals of not more than 12 calendar months, with certificates of insurance with respect to the insurance required as aforesaid signed by an independent insurance broker. All insurance shall be taken out in the name of Lessee and BRAE (or its assignee) as their interests may appear.

D. Lessee agrees to assume all taxes, assessments and other governmental charges of whatsoever kind or character relating to each Car or to the lease, delivery or operation thereof which may be accrued, levied, assessed or imposed during the lease term, except taxes on income imposed on Lessor or on an owner or secured party under any financing agreement with Lessor. BRAE shall forward to Lessee all demands for sales and use tax payments received

by it on behalf of Lessee. Lessee will comply with all state and local laws requiring the filing of ad valorem tax returns on the Cars.

## 6. Lease Rental

A. Lessee agrees, subject to Section 6D hereof, to pay the following rent to BRAE for the use of the Cars:

(i) BRAE shall receive all payments made to Lessee by other railroad companies for their use or handling of the Cars, including but not limited to mileage charges, straight car hire payments and incentive car hire payments (all of which payments made to Lessee are hereinafter collectively referred to as "Payments") if the utilization of all of the Cars delivered to Lessee on an aggregate basis for each calendar year shall be equal to or less than 86.75 percent. In the case of the additional cars referred to in 3C, 86.25 percent shall be substituted for 86.75 percent for the purpose of these calculations. For the purpose of determining utilization, "Car Day" shall mean one day, or hourly fraction thereof, on which one Car is on lease hereunder, commencing on the initial loading of such Car. For the purpose of this Agreement, "Utilization" shall mean with respect to any period a fraction the numerator of which is (x) the aggregate number of Car Days for which payments are earned by the Lessee during such period, and the denominator of which is (y) the aggregate number of Car Days during such period.

(ii) In the event Utilization exceeds 86.75 percent in any calendar year, BRAE shall receive an amount equal to the BRAE Base Rental plus an amount equal to one-half of the payments earned in excess of 90 percent utilization. For the purpose hereof, BRAE Base Rental shall be an amount equal to the total payments for the calendar year multiplied by a fraction, the numerator of which is 86.75 percent and the denominator of which is the Utilization for such calendar year. (The above determination of BRAE Base Rental insures that Lessee will, if Utilization is greater than 86.75 percent in any calendar year, receive all the payments between 86.75 percent and 90 percent utilization and one-half of the payments earned in excess of 90 percent.) In the case of the additional Cars referred to in 3C, 86.25 percent shall be substituted for 86.75 percent for the purpose of these calculations.

(iii) If Lessee pays other railroads to move Cars in accordance with Section 3A hereof, BRAE shall reimburse Lessee for such payments.

(iv) The rental charges payable to BRAE by Lessee shall be paid from the payments received by Lessee in the following order until BRAE receives the amounts due it pursuant to this section: (1) incentive car hire payments; (2) straight car hire payments; (3) mileage charges and (4) other.

(v) In the event damage beyond repair or destruction of a Car has been reported in accordance with Rule 7 of the AAR Car Service and Car Hire Agreement Code of Car Hire Rules-Freight and the appropriate amount due as a result thereof is received by BRAE, said damaged or destroyed Car will be removed from the coverage of this Agreement as of the date that payment of car hire payments ceased.

B. The calculations required above shall be made within five months after the end of each Service Year (where Service Year is defined as the period beginning on April 1 and ending on March 31 of the following calendar year.) However, since the parties desire that rental payments shall be made currently so that BRAE may meet its financial commitments, payments to BRAE shall be made as follows:

In the event Lessee performs all record keeping functions respecting the Cars as provided in Section 4C, Lessee will remit to BRAE in as expeditious a manner as possible but no later than the first business day of the third month after the end of each month in which they are earned (the "Service Month") an amount equal to 85% of the total payments earned by the Cars based on usage reported for the Service Month and including actual car mileage earnings when available. At the time a Service Month's first remittance is made, Lessee shall report for the same month the dollar figure, or 100% of the payments earned. An amount equal to 10% of the payments earned in the Service Month plus any adjustments shall be remitted to BRAE within 30 days after the initial payment, and the remaining 5% shall be remitted to BRAE within 60 days of the initial payment. An accounting of Utilization and payments earned by the Cars shall be made within 45 days of the end of each quarter of the Service Year; Lessee may retain those funds due it under 6A(ii) and 6D if appropriate.

C. In the event a fraction, the numerator of which is the aggregate number of days that per diem is earned on the Cars in the immediately preceding four (4) calendar quarters commencing with the first full four (4) calendar quarters after receipt of the last Cars on the Schedule executed concurrently herewith, and the denominator of which is the aggregate number of days that the Cars were available to the Lessee during such period less the aggregate number of days the Cars were out of service on foreign railroads not earning car hire revenues for any reason, is less than 86.25 percent, BRAE may at its option and upon not less than thirty (30) days prior written notice to Lessee, terminate this agreement with respect to such number of Cars as is necessary to bring the utilization of the Cars up to 86.25 percent; provided however, that prior to such termination Lessee may have the option of paying BRAE an amount equal to the difference between the amount BRAE actually received during said (4) calendar quarters and the amount BRAE would have received had a utilization rate for the Cars of 86.25 percent been achieved.

In the event a fraction, the numerator of which is the aggregate number of days that per diem is earned on the Cars in the

immediately preceding two (2) calendar quarters commencing with the first full two (2) calendar quarters after receipt of the last Cars on the Schedule executed concurrently herewith, and the denominator of which is the aggregate number of days that the Cars were available to the Lessee during such period less the aggregate number of days the Cars were out of service on foreign railroads not earning car hire revenues for any reason, is less than 84 percent, BRAE may at its option and upon not less than thirty (30) days prior written notice to Lessee, terminate this agreement with respect to such number of Cars as is necessary to bring the utilization of the Cars up to 84 percent; provided however, that prior to such termination Lessee may have the option of paying BRAE an amount equal to the difference between the amount BRAE actually received during said two (2) calendar quarters and the amount BRAE would have received had a utilization rate for the Cars of 84 percent been achieved.

D. If the ICC shall, at any time, (1) issue an order reducing incentive car hire payments for Cars on an annual basis to less than three months without a corresponding increase in straight car hire payments or other monies available to both BRAE and Lessee at least equal in amount to such reduction or (2) determine that Lessee may not apply its incentive car hire receipts in payment of the rental charges set forth in this Section 6, BRAE may, at its election which shall be effective promptly upon written notice to Lessee, either (i) terminate this Agreement, or (ii) keep this Agreement in effect except that it shall be modified so that thereafter the rent which Lessee shall pay to BRAE for the use of the Cars, notwithstanding anything contained in Section 6A hereof to the contrary, shall be 100% of the payments, of whatever character, made to Lessee by other railroad companies for their use or handling of the Cars, including but not limited to, mileage charges, straight car hire payments and incentive car hire payments.

With the anticipation, however, by BRAE and Lessee that there will be periodic upward revisions in the rate of Payments made by other railroads for the use or handling of the Cars and/or that the ICC may require increases in such rates, the incremental revenue position (incremental revenue position defined as a positive number which reflects the difference between revenues available from per diem and incentive per diem at the time of execution of the Lease Agreement and per diem, incentive per diem, and other sources at the time of such increases) will be divided between BRAE and Lessee in the ratio of 50/50.

E. During the term of this Agreement, if any serviceable Car remains on Lessee's railroad tracks for more than seven consecutive days, BRAE may, at its option and upon not less than twenty-four (24) hours' prior written notice, terminate this Agreement as to such Car and withdraw such Car from Lessee's railroad tracks. If any such Car remains on Lessee's railroad tracks more than seven consecutive days because Lessee has not given preference to the Cars as specified in Section 3B, Lessee shall be liable for and remit to BRAE an amount equal to the payments Lessee would have earned if such cars were in the physical possession and use of another railroad for the entire period.

F. BRAE Corporation will file the necessary elections pursuant to Sections 46-48 inclusive, of the Internal Revenue Service Code of 1954, as amended, to treat Lessee as purchaser of the equipment for investment tax credit purposes.

## 7. Possession and Usage

A. So long as Lessee shall not be in default under this Agreement, Lessee shall be entitled to the possession, use and quiet enjoyment of the Cars in accordance with the terms of this Agreement and in the manner and to the extent Cars are customarily used in the railroad freight business, provided that Lessee retain on its railroad tracks no more Cars than are necessary to fulfill its immediate requirements to provide transportation and facilities upon reasonable request thereof to shippers on its railroad tracks. However, Lessee's rights shall be subject and subordinate to the rights of any owner or secured party under any financing agreement entered into by BRAE in connection with the acquisition of Cars, i.e., upon notice to Lessee from any such secured party or owner that an event of default has occurred and is continuing under such financing agreement, such party may require that all rent shall be paid directly to such party and/or that the Cars be returned to such party. Lessee agrees that to the extent it has physical possession and can control use of the Cars, the Cars will at all times be used and operated under and in compliance with the laws of the jurisdiction in which the same may be located and in compliance with all lawful acts, rules and regulations, and orders of any governmental bodies or officers having power to regulate or supervise the use of such property, except that either BRAE or Lessee may in good faith and by appropriate proceedings contest the application of any such rule, regulation or order in any reasonable manner at the expense of the contesting party.

B. Lessee will not directly or indirectly create, incur, assume, or suffer to exist any mortgage, pledge, lien, charge, encumbrance, or other security interest or claim on or with respect to the Cars or any interest therein or in this Agreement or any Schedule thereto. Lessee will promptly, at its expense, take such action as may be necessary to duly discharge any such mortgage, pledge, lien, charge, encumbrance, or other security interest, or claim if the same shall arise at any time.

## 8. Default

A. The occurrence of any of the following events shall be an event of default:

(i) The nonpayment of Lessee of any sum required herein to be paid by Lessee within thirty (30) days after receipt by Lessee of written notification that any such payment is due.

(ii) The breach by Lessee of any other term, covenant, or condition of this Agreement which is not cured within ten (10) days thereafter.



(iii) Any act of insolvency by Lessee, or the filing by Lessee of any petition or action under any bankruptcy, reorganization, insolvency or moratorium law, or any other law or laws for the relief of, or relating to, debtors.

(iv) The filing of any involuntary petition under any bankruptcy, reorganization, insolvency or moratorium law against Lessee that is not dismissed within sixty (60) days thereafter, or appointment of any receiver or trustee to take possession of the properties of Lessee, unless such petition or appointment is set aside or withdrawn or ceases to be in effect within sixty (60) days from the date of said filing of appointment.

(v) The subjection of any of the Lessee's property to any levy, seizure, assignment, application or sale for or by any creditor or governmental agency.

(vi) Any action by Lessee to discontinue rail service on all or a portion of its tracks or abandon any of its rail properties pursuant to applicable provisions of the Interstate Commerce Act or the laws of any state if it would materially affect Utilization.

(vii) Lessee shall be merged with or consolidated into another corporation which after such merger or consolidation shall have a net worth less than that of Lessee immediately prior thereto.

B. Upon the occurrence of any event of default, BRAE may, at its option,

(i) Terminate this Agreement, proceed by any lawful means to recover damages for a breach hereof, and terminate Lessee's right of possession and use of the Cars, whereupon all right and interest of Lessee in the Cars shall terminate and thereupon BRAE may enter upon any premises where the Cars may be located and take possession of them and henceforth hold, possess and enjoy the same free from any right of Lessee, provided that BRAE shall nevertheless have the right to recover from Lessee any and all rental amounts which under the terms of this Agreement may then be due or which may have accrued to the date on which BRAE took such possession; or

(ii) Proceed by any lawful means to enforce performance by Lessee of this Agreement. Lessee agrees to bear the costs and expenses, including without limitation reasonable attorney's fees, incurred by BRAE in connection with the exercise of its remedies pursuant to this Section 8B.

## 9. Termination

At the expiration or termination of this Agreement as to any Car, Lessee will surrender possession of such Car to BRAE by delivering the same to BRAE at such place reasonably convenient to Lessee as BRAE shall designate. A Car shall be no longer subject to this Agreement upon the removal of Lessee's railroad markings from such Car and the placing thereon of such markings as may be designated by BRAE, either, at the option of BRAE, (1) by Lessee upon return of such Car to Lessee's railroad line or (2) by another railroad line which has physical possession of the Car at the time of or subsequent to termination of the lease term as to such Car. If such Car is not on the railroad line of Lessee upon expiration or termination, any cost of assembling, delivering, storing, and transporting such Car to Lessee's railroad line or the railroad line of a subsequent lessee shall be borne by BRAE. If such Car is on the railroad line of Lessee upon such expiration or termination or is subsequently returned to Lessee's railroad line, Lessee shall at BRAE's expense within five (5) working days remove Lessee's railroad markings from such Car and place thereon such markings as may be designated by BRAE. After the removal and replacement of markings, Lessee shall use its best efforts to load such Car with freight and deliver it to a connecting carrier for shipment. Lessee shall provide up to thirty (30) days free storage if trackage is available on its railroad tracks for BRAE or the subsequent lessee of any terminated Car. If any Car is terminated pursuant to Sections 6E or 8 hereof prior to the end of its lease term, Lessee shall be liable to BRAE for all costs and expenses incurred by BRAE to repaint such Car and place thereon the markings and name or other insignia of BRAE's subsequent lessee.

#### 10. Indemnities

Lessee will defend, indemnify and hold BRAE harmless from and against (1) any and all claims based upon loss or damage to the Cars, (2) any other type of claim, cause of action, damage, or liability which may be asserted against BRAE with respect to the Cars, including without limitation claims with respect to the delivery to Lessee's railroad line, return, use, replacement, or operation of the Cars.

#### 11. Representations, Warranties and Covenants

Lessee represents, warrants and covenants that:

(i) Lessee is a corporation duly organized, validly existing and in good standing under the laws of the state where it is incorporated and has all necessary corporate power and authority, permits and licenses to perform its obligations under this Agreement.

(ii) The entering into and performance of this Agreement will not violate any judgment, order, law or regulation applicable to Lessee, or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon any assets of Lessee or on the Cars pursuant to any

instrument to which Lessee is a party or by which it or its assets may be bound.

(iii) Except as previously disclosed to BRAE in writing, there is no action or proceeding pending or threatened against Lessee before any court or administrative agency or other governmental body which might result in any material adverse effect on the business, properties and assets, or conditions, financial or otherwise, of Lessee.

(iv) There is no fact which Lessee has not disclosed to BRAE in writing, nor is Lessee a party to any agreement or instrument nor subject to any charter or other corporate restriction which, so far as the Lessee can now reasonably foresee, will individually or in the aggregate materially adversely affect the ability of the Lessee to perform its obligations under this Agreement.

(v) Lessee has during the years 1964-1968 neither built, leased nor purchased any new or rebuilt freight cars.

## 12. Inspection

BRAE shall at any time during normal business hours have the right to enter the premises where the Cars may be located for the purpose of inspecting and examining the Cars to insure Lessee's compliance with its obligations hereunder. Lessee shall immediately notify BRAE of any accident connected with the malfunctioning or operation of the Cars, including in such report the time, place and nature of the accident and the damage caused, the names and addresses of any persons injured and of witnesses, and other information pertinent to Lessee's investigation of the accident. Lessee shall also notify BRAE in writing within five (5) days after any attachment, tax lien or other judicial process shall attach to any Car. Lessee shall furnish to BRAE promptly upon its becoming available, a copy of its annual report submitted to the ICC and, when requested, copies of any other income or balance sheet statements submitted to the ICC or its shareholders generally.

## 13. Miscellaneous

A. This Agreement and the Schedules contemplated hereby shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns, except that Lessee may not without the prior written consent of BRAE assign this Agreement or any of its rights hereunder or sublease the Cars to any party, and any purported assignment or sublease in violation hereof shall be void. Lessee agrees to acknowledge, upon receipt, any assignment of this Agreement by BRAE to an owner or secured party under any financing agreement entered into by BRAE in connection with the acquisition of all or part of the Cars leased hereunder.

B. Both parties agree to execute the documents contemplated by this transaction and such other documents as may be required in furtherance of any financing agreement entered into by BRAE in connection with the acquisition of the Cars in order to confirm the financing party's interest in and to the Cars, this Agreement and Schedules hereto and to confirm the subordination provisions contained in Section 7 hereof and in furtherance of this Agreement.

C. It is expressly understood and agreed by the parties hereto that this Agreement constitutes a lease of the Cars only and no joint venture or partnership is being created. Notwithstanding the calculation of rental payments, nothing herein shall be construed as conveying to Lessee any right, title or interest in the Cars except as a lessee only.

D. No failure or delay by BRAE shall constitute a waiver or otherwise affect or impair any right, power or remedy available to BRAE nor shall any waiver or indulgence by BRAE or any partial or single exercise of any right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

E. This Agreement shall be governed by and construed according to the laws of the State of Delaware.

F. All notices hereunder shall be in writing and shall be deemed given when delivered personally or when deposited in the United States mail, postage prepaid, certified or registered, addressed to the president of the other party at the address set forth above.

G. No security interest in this Agreement, as chattel paper (as defined in the uniform Commercial Code), may be created by the transfer of possession of any counterpart hereof other than the original counterpart hereof. The original counterpart hereof shall be marked "Original" and delivered to BRAE and all other counterparts hereof shall be duplicated and shall be marked "Duplicate".

H. Nondiscrimination; No Conflict of Interest; Records; Approval  
The Lessee hereby agrees to comply with the State of Michigan and Federal nondiscrimination provisions set forth in Appendices A and B hereto.

No director, officer or employee of the Lessee during his tenure as such or during the year immediately thereafter shall have any interest, direct or indirect, in this Lease or any of the transactions contemplated hereby.

The Lessee shall retain all records related to this Lease on file for not less than four years following the later of expiration of the Operating Agreement or the Term.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first signed.

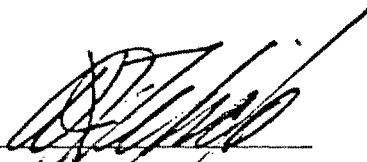
BRAE CORPORATION

MICHIGAN INTERSTATE RAILWAY  
COMPANY

By: \_\_\_\_\_

Title: \_\_\_\_\_

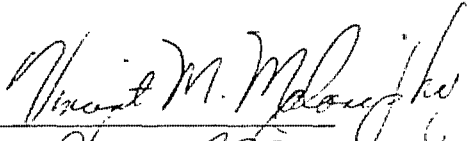
Date: \_\_\_\_\_

  
President  
2/16/79

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

  
Chmn. & CEO  
Dec 20 1978

STATE OF MICHIGAN     )  
                              )   ss:  
COUNTY OF SHIAWASSEE)

On this 20th day of December, 1978, before me personally appeared Vincent M. Malanaphy to me personally known, who being by me duly sworn, says that he is the Chairman and Chief Executive Officer of MICHIGAN INTERSTATE RAILWAY COMPANY, that the foregoing instrument was signed on behalf of such corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of such corporation.

Melody Lee King  
Notary Public

(Notarial Seal)

My Commission Expires:

January 4, 1982

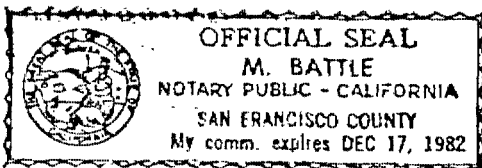
STATE OF CALIFORNIA )

)

ss:

CITY AND COUNTY OF SAN FRANCISCO )

On this 16th day of February, 1979, before me personally appeared William J. Texido, to me personally known, who, being by me duly sworn, says that he is a President of BRAE CORPORATION, that the foregoing instrument was signed on behalf of such corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of such corporation.



M. Battle

Notary Public

(Notarial Seal)

My Commission expires: 12/17/82

Rider No. I to the Lease Agreement dated December 20  
1978, between BRAE Corporation and Michigan Interstate Railway  
Company.

Section 5D is hereby amended by adding thereto, the follow-  
ing:

BRAE Corporation will pay to Lessee the funds equivalent  
to the ad valorem/property tax assessment by the State of Mich-  
igan on the Cars or 1.5 percent of the depreciated book value of  
the Cars, whichever is greater. The determination of the amount  
will be by the formula promulgated by the State of Michigan per-  
taining to railroad rolling stock owned or operated under the  
markings of Michigan based railroads and assessable against the  
Cars, without regard to any tax benefits Lessee may enjoy as a  
result of legislation. Such funds will be paid to Lessee to  
coincide with the receipt by Lessee of notification that any such  
payments are or would be due. It is the intent of the parties that  
these equivalent funds be paid to Lessee, even though no tax may  
payable by Lessee.

BRAE CORPORATION

By: [Signature]

Title: President

Date: January 29, 1979

MICHIGAN INTERSTATE RAILWAY  
COMPANY

By: Vincent M. Maloney

Title: Chairman and Chief  
Executive Officer

Date: December 20, 1978



Rider No. II to the Lease Agreement dated December 20, 1978, between BRAE Corporation and Michigan Interstate Railway Company.

Section 6C is hereby amended by adding, thereto, the following:

Until such time that Michigan Interstate Railway Company has taken delivery of at least 200 Cars from BRAE Corporation under terms of this Agreement, 84 percent is substituted for 86.25 percent in the first paragraph of 6C, and 80 percent is substituted for 84 percent in the second paragraph of 6C.

BRAE CORPORATION

By: [Signature]

Title: President

Date: January 29, 1979

MICHIGAN INTERSTATE RAILWAY  
COMPANY

By: [Signature]

Title: Chairman and Chief Executive Officer

Date: December 20, 1978

EQUIPMENT SCHEDULE No. 1

BRAE CORPORATION hereby leases the following Cars to Michigan Interstate Railway Company.....  
pursuant to that certain Lease Agreement dated as of December 20, 1978.

A.A.R. Mech. Design	Description	Numbers	Dimensions			Doors Width	No. of Cars
			Length	Inside Width	Height		
XM	Box, Stl., 70 TON Nailable Steel floors, sliding doors		50'6"	9'6"	Plate C	10' single	100

BRAE CORPORATION

BY: *[Signature]*TITLE: PresidentDATE: January 29, 1979

BC-10/77

Michigan Interstate Railway CompanyBY: *[Signature]*TITLE: Chairman & CEODATE: 12/20/78

STATE OF Michigan  
COUNTY OF Wayne

On this 20th day of December, 1978, before me personally appeared \_\_\_\_\_, to me personally known, who being by me duly sworn says that such person is Chairman of \_\_\_\_\_, that the foregoing Equipment Schedule No. 1 was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of such corporation.

Jane E. Bevan  
Notary Public

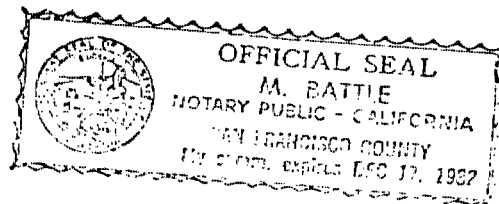
JANE E. BEVAN  
Notary Public, Oakland County, Michigan  
Acting in Wayne County  
My Commission Expires August 17, 1980

JANE E. BEVAN  
Notary Public, Oakland County, Michigan  
My Commission Expires August 17, 1980

STATE OF California  
COUNTY OF San Francisco

On this 24th day of January, 1979, before me personally appeared H. J. Texido to me personally known, who being by me duly sworn says that such person is President of BRAE CORPORATION, that the foregoing Equipment Schedule No. 1 was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of such corporation.

M. Battle  
Notary Public



## EQUIPMENT SCHEDULE No. 2

BRAE CORPORATION hereby leases the following Cars to Michigan Interstate Railway Company.....  
pursuant to that certain Lease Agreement dated as of December 20, 1977.

A.A.R. Mech. Design	Description	Numbers	Dimensions			Doors Width	No. of Cars
			Length	Inside Width	Height		
XM	Box, Stl., 70 TON Nailable Steel floors, sliding doors		50'6"	9'6"	Plate C	10' single	100

BRAE CORPORATION

BY: TITLE: PresidentDATE: January 29, 1978

BC-10/77

Michigan Interstate Railway CompanyBY: TITLE: Chairman & CEODATE: 12/20/78

STATE OF Michigan  
COUNTY OF Wayne

On this 20th day of December, 1978, before me personally appeared \_\_\_\_\_, to me personally known, who being by me duly sworn says that such person is Chairman of \_\_\_\_\_, that the foregoing Equipment Schedule No. 2 was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of such corporation.

Jane E. Bevan

Notary Public

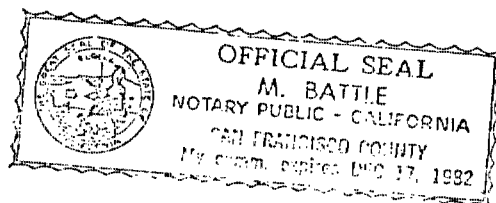
JANE E. BEVAN  
Notary Public, Oakland County, Michigan  
Acting in Wayne County  
My Commission Expires August 17, 1980

STATE OF California  
COUNTY OF San Francisco

On this 19th day of January, 1979, before me personally appeared R. J. Texido to me personally known, who being by me duly sworn says that such person is President of BRAE CORPORATION, that the foregoing Equipment Schedule No. 2 was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of such corporation.

M. Battle

Notary Public



## EQUIPMENT SCHEDULE No. 3

BRAE CORPORATION hereby leases the following Cars to Michigan Interstate Railway Company ..... pursuant to that certain Lease Agreement dated as of December 20, 1978.

A.A.R. Mech. Design	Description	Numbers	Dimensions			Doors Width	No. of Cars
			Length	Inside Width	Height		
XM	Box, Stl., 70 TON Nailable Steel floors, sliding doors		50'6"	9'6"	Plate C	10' single	100

BRAE CORPORATION

BY: TITLE: PresidentDATE: January 23, 1979

BC-10/77

Michigan Interstate Railway Company

BY: TITLE: Chairman & C.C. OUDATE: 12/20/78

STATE OF Michigan  
COUNTY OF Wayne

On this 20th day of December, 1978, before me personally appeared \_\_\_\_\_, to me personally known, who being by me duly sworn says that such person is Chairman of \_\_\_\_\_, that the foregoing Equipment Schedule No. 3 was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of such corporation.

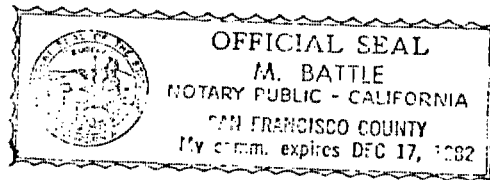
Jane E. Bevan  
Notary Public

JANE E. BEVAN  
Notary Public, Oakland County, Michigan  
Acting in Wayne County  
My Commission Expires August 17, 1980

STATE OF California  
COUNTY OF San Francisco

On this 29th day of January, 1979, before me personally appeared H. J. Turido to me personally known, who being by me duly sworn says that such person is Inside it of BRAE CORPORATION, that the foregoing Equipment Schedule No. 3 was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of such corporation.

M. Battle  
Notary Public



## PROHIBITION OF DISCRIMINATION IN STATE CONTRACTS

In connection with the performance of work under this contract, the contractor agrees as follows:

1. In accordance with Act No. 453, Public Acts of 1976, the contractor hereby agrees not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight, or marital status. Breach of this covenant may be regarded as a material breach of this contract.
2. The contractor hereby agrees that any and all subcontracts to this contract, whereby a portion of the work set forth in this contract is to be performed, shall contain a covenant the same as hereinbefore set forth in Section 1 of this Appendix.
3. The contractor will take affirmative action to insure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, age, sex, height, weight or marital status. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
4. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, age, sex, height, weight or marital status.
5. The contractor or his collective bargaining representative will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice advising the said labor union or workers' representative of the contractor's commitments under this appendix.
6. The contractor will comply with all relevant published rules, regulations, directives, and orders of the Michigan Civil Rights Commission which may be in effect prior to the taking of bids for any individual state project.
7. The contractor will furnish and file compliance reports within such time and upon such forms as provided by the Michigan Civil Rights Commission, said forms may also elicit information as to the practices, policies, program, and employment statistics of each subcontractor as well as the contractor himself, and said contractor will permit access to his books, records, and accounts by the Michigan Civil Rights Commission, and/or its agent, for purposes of investigation to ascertain compliance with this contract and relevant with rules, regulations, and orders of the Michigan Civil Rights Commission.
8. In the event that the Civil Rights Commission\* finds, after a hearing held pursuant to its rules, that a contractor has not complied with the contractual obligations under this agreement, the Civil Rights Commission may, as part of its order based upon such findings, certify said findings to the Administrative Board of the State of Michigan, which Administrative Board may order the cancellation of the contract found to have been violated, and/or declare the contractor ineligible for future contracts with the state and its political and civil subdivisions, departments, and officers, and including the governing boards of institutions of higher education, until the contractor complies with said order of the Civil Rights Commission. Notice of said declaration of future ineligibility may be given to any or all of the persons with whom the contractor is declared ineligible to contract as a contracting party in future contracts. In any case before the Civil Rights Commission in which cancellation of an existing contract is a possibility, the contracting agency shall be notified of such possible remedy and shall be given the option by the Civil Rights Commission to participate in such proceedings.
9. The contractor will include, or incorporate by reference, the provisions of the foregoing paragraphs (1) through (3) in every subcontract or purchase order unless exempted by the rules, regulations or orders of the Michigan Civil Rights Commission, and will provide in every subcontract or



## APPENDIX B

### AFFIRMATIVE ACTION

#### Section 1. Definitions

As used in this Appendix:

- (a) "Act" means the Railroad Revitalization and Regulatory Reform Act of 1976 (P.L. 94-210)
- (b) "Administrator" means the Federal Railroad Administrator or his delegate.
- (c) "Affirmative action program" means the program described in Sections 265.9 through 265.15 of 49 CFR Part 265.
- (d) "Agency" means the Federal Railroad Administration.
- (e) "Contractor" means a prime contractor or a sub-contractor who will be paid in whole or in part directly or indirectly from financial assistance under the Rail Acts.
- (f) "Minority" means women, Blacks, Hispanic Americans, American Indians, American Eskimos, American Orientals and American Aleuts.
- (g) "Rail Acts" means the Act and the provisions of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 701 et seq.) and the Rail Passenger Service Act (45 U.S.C. 501 et seq.) amended by the Act.
- (h) "Regulations" means the Regulations relative to non-discrimination in Federally-assisted programs of the DOT Title 49, CFR, Part 21, as they may be amended from time to time.
- (i) "Subsidizer" means Michigan State Transportation Commission through the Michigan Department of Transportation.

#### Section 2. Affirmative Action Requirements

In connection with the performance of rail freight services under this Agreement, the Contractor agrees as follows:

- (a) The Contractor shall comply with the Regulations, which are herein incorporated by reference and made a part of this Agreement.
- (b) The Contractor, with regard to the work performed by it under this Agreement, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- (c) In all solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Contractor of its obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

(d) The Contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Subsidizer or the Agency to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the Subsidizer or to the Agency, whichever is appropriate, and shall set forth what efforts it has made to obtain the information.

(e) In the event of the Contractor's noncompliance with the nondiscrimination provisions of this Agreement, the Subsidizer shall impose such contract sanctions as it or the Agency may determine to be appropriate, including but not limited to:

- (1) Withholding of payments to the Contractor under this Agreement until it complies; and/or
- (2) Cancellation, termination or suspension of this Agreement in whole or in part.

(f) The Contractor shall include the provisions of paragraphs (a) through (e) in every subcontract, including procurement of materials and lease of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The Contractor shall take such action with respect to any subcontract or procurement as the Subsidizer or the Agency may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Contractor may request the Subsidizer to enter into such litigation to protect the interests of the Subsidizer and, in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

(g) The Contractor shall comply with all applicable provisions of the Rail Acts, Regulations of the Office of the Secretary of Transportation, 49 CFR 1.49 (u), Public Law No. 94-210 (90 Stat. 31), and Section 905 of the Act.

(h) As a condition to receiving Federal financial assistance under the Act or the provisions of the Rail Acts, the Contractor hereby agrees to observe and comply with the following:

(1) No person in the United States shall on the ground of race, color, national origin or sex be excluded from participation in, or denied the benefits of, or be subjected to discrimination under, any project, program or activity funded in whole or in part through such assistance.

(i) The following specific discriminatory actions are prohibited:

(1) The Contractor under any projects, program or activity to which these clauses apply shall not, directly or through contractual or other arrangements, on the ground of race, color, national origin, or sex:

(A) Deny a person any service, financial aid, or other benefit provided under such project, program or activity;

(B) Provide any service, financial aid, or other benefit to a person which is different, or is provided in a different manner, from that provided to others under such project, program or activity;

(C) Subject a person to segregation or separate treatment in any matter related to their receipt of any service, financial aid or other benefit under such project, program or activity;

(D) Restrict a person in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid or other benefit under such project, program or activity; or

(E) Deny a person an opportunity to participate in such project, program or activity through the provision of services or otherwise or afford them an opportunity to do so which is different from that afforded others under such project, program or activity.

(2) The Contractor in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such project, program or activity or the class of persons to whom, or the situations in which such services, financial aid, other benefits, or facilities will be provided under any such project, program or activity, or the class of persons to be afforded an opportunity to participate in any such project, program, or activity shall not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting persons to discrimination because of their race, color, national origin, or sex, or have the effect of defeating or substantially impairing accomplishment of the objectives of the project, program or activity with respect to individuals of a particular race, color, national origin or sex.

(3) In determining the site or location of facilities, the Contractor shall not make selections with the purpose or effect of excluding persons from, denying them the benefits of, or subjecting them to discrimination under any project, program, or activity to which these clauses apply on the grounds of race, color, national origin or sex, or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of these clauses.

(4) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, national origin or sex. Except as otherwise required by the regulations or orders of the Administrator, the Contractor shall take affirmative action to insure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, national origin or sex. Such action shall include, but not be limited to the following: employment, promotion, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment notices to be provided by the agency's representative setting forth the provisions of these non-discrimination clauses. The Contractor understands and agrees that it shall not be an excuse for failure to provide affirmative action that the labor organizations with which the Contractor has a collective bargaining agreement failed or refused to admit or qualify minorities for admission to the union, or that the provisions of such agreements otherwise prevent the Contractor from implementing its affirmative action program.

(5) The Contractor shall not discriminate against any business organization in the award of any contract because of race, color, national origin or sex of its employees, managers or owners. Except as otherwise required by the regulations or orders of the Administrator, the Contractor shall take affirmative action to insure that business organizations are permitted to compete and are considered for awards of contracts without regard to race, color, national origin or sex.

(j) As used in these clauses, the services, financial aid, or other benefits provided under a project, program or activity receiving financial assistance under the Rail Acts include any service, financial aid, or other benefit provided in or through a facility funded through financial assistance provided under the Rail Acts.

(k) The enumeration of specific forms of prohibited discrimination does not limit the generality of prohibition in paragraph (h) (1) of this Section.

(l) These clauses do not prohibit the consideration of race, color, national origin or sex if the purpose and effect are to remove or overcome the consequences of practices or impediments which have restricted the availability of, or participation in, the Contractor's operations or activities on the grounds of race, color, national origin or sex. Where prior discriminatory or other practice or usage tends on the grounds of race, color, national origin or sex, to exclude individuals or businesses from participation in, to deny them the benefits of, or subject them to discrimination under any project, program or activity to which these clauses apply, the Contractor must take affirmative action to remove or overcome the effects of the prior discriminatory practice or usage. Even in the absence of prior discriminatory practice or usage to which this part applies, the Contractor is expected to take affirmative action to insure that no person is excluded from participation in or denied the benefits of the project, program or activity on the grounds of race, color, national origin or sex, and that minorities and minority businesses are afforded a reasonable opportunity to participate in employment and procurement opportunities that will result from financial assistance provided under the Rail Acts.

(m) The Contractor agrees to take such actions as are necessary to monitor its activities and those of its contractors who will be paid in whole or in part with funds provided by the Rail Acts, or from obligations guaranteed by the administrator pursuant to the Rail Acts, except obligations guaranteed under section 602 of the Rail Passenger Service Act, in order to carry out affirmatively the purposes of paragraph (h) above, and to implement the affirmative action program developed and implemented pursuant to 49 CFR 265.

(n) The Contractor shall, in all advertisements for employees, or solicitations for services or materials from business organizations placed by or on behalf of the recipient, in connection with any project, program or activity funded in whole or in part with financial assistance under the Rail Acts, state that all applicants for employment will receive consideration for employment, and all business organizations will receive consideration for an award of a contract without regard to race, color, national origin or sex.

(o) The Contractor shall send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice to be provided by the agency's representative, advising the labor organization or worker's representative of the Contractor's commitments under Section 903 of the Act, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(p) The Contractor shall comply with all provisions of Section 905 of the Act, the Civil Rights Act of 1964, any other Federal civil rights act and with the rules, regulations, and orders issued under such acts.

(q) The Contractor shall furnish all information and reports required by the rules, regulations, and orders of the Administrator, and will permit access to its books, records, and accounts by the Administrator for purposes of investigation to ascertain compliance with rules, regulations, and orders referred to in paragraph (p) hereof.

(r) The Contractor shall furnish such relevant procurement information not included in its affirmative action program, as may be requested by the Minority Business Resource Center. Upon the request of the Contractor, the Minority Business Resource Center shall keep such information confidential to the extent necessary to protect commercial or financial information or trade secrets to the extent permitted by law.

(s) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Agreement, or with the provisions of Section 905 of the Act, the Civil Rights Act of 1964, or with any other Federal civil rights act, or with any rules, regulations, or orders issued under such acts, this Agreement will, after notice of such noncompliance, and after affording a reasonable opportunity for compliance, be cancelled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Federal financial assistance in accordance with procedures authorized in Section 906 of the Act, or as otherwise provided by law.

(t) The Contractor shall not enter into any contract or contract modification whether for the furnishing of supplies or services or for the use of real or personal property, including lease arrangements, or for construction, in connection with a project, program or activity which receives financial assistance under the Rail Acts with a contractor debarred from or who has not demonstrated eligibility for Federal or federally assisted contracts, and will carry out such sanctions and penalties for violation of this part as may be imposed upon contractors and subcontractors by the Administrator or any other authorized Federal official. The Contractor shall insure that the clauses required by Section 4 of this Appendix implementing Executive Order No. 11246 will be placed in each non-exempt federally assisted construction contract.

(u) The Contractor agrees to comply with and implement the written affirmative action program as approved by the Administrator pursuant to Section 265.17 of Title 49 CFR.

(v) The Contractor agrees to notify the Administrator promptly of any law suit or complaint filed against the recipient alleging discrimination on the basis of race, color, national origin or sex.

(w) The Contractor shall include the preceeding provisions of paragraphs (h) through (v) in every contract or purchase order, whether for the furnishing of supplies or services or for the use of real or personal property, including lease arrangements, or for construction relating to project, programs or activities financed in whole or in part under the Rail Acts. The Contractor shall cause each such contractor or vendor to include the provisions of paragraphs (h) through (v) in every subcontract. The Contractor will take such action with respect to any such contract or purchase order as the Administrator may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Administrator, the Contractor may request the United States to enter into such litigation.

### Section 3. Affirmative Action Programs

(a) General. A prerequisite to the development of a satisfactory affirmative action program is the identification and analysis of problem areas inherent in minority employment and utilization of minority employment and utilization of minority businesses, and an evaluation of opportunities for utilization of minority group personnel and minority businesses. Therefore, an affirmative action program to guarantee employment and contractual opportunities shall provide for specific actions keyed to the problems and needs of minority persons and minority businesses including, where there are deficiencies based on past practices, and with respect to future plans for hiring and promoting employees or awarding contracts, the development of specific goals and timetables for the prompt achievement and maintenance of full opportunities for minority persons and minority businesses with respect to programs, projects and activities subject to this part.

#### (b) Employment practices

(1) The affirmative action program for employment showing the level of utilization of minority employees, and establishing a plan to insure representative opportunities for employment for minority persons shall be developed in accordance with the regulations of the Department of Labor at 41 CFR 60-2.

(2) Railroad applicants or recipients shall develop their program for each establishment in their organization and by job categories in accordance with the requirements of the Joint Reporting Committee of the Equal Employment Opportunity Commission and the Department of Labor. Other applicants recipients or contractors may use any program format or organization which has been approved for use by other Federal agencies enforcing equal opportunity laws.

(3) The affirmative action program shall show the source of statistical data used.

(4) The affirmative action program shall include a listing by job category of all jobs which may be established or filled by the applicant, recipient or contractor as a result of the project, program or activity funded by federal financial assistance under the Rail Acts for the first five (5) years of such project, program or activity or the period during which such project, program, or activity will be undertaken, whichever is the lesser ("program period").

(5) The affirmative action program shall set forth in detail a plan to insure that with respect to the project, program, or activity financed in whole or in part through financial assistance under the Rail Acts, minority persons have an opportunity to participate in employment in proportion to the percentage of the minority work force in the area where the applicant's, recipient's or contractor's operations are located as compared to the total work force, and that such minority persons have an equal opportunity for promotion or upgrading. Where appropriate because of prior underutilization of minority employees, the program shall establish specific goals and timetables to utilize minority employees in such projects, programs or activities in the above-mentioned proportion.

(c) Contracts

(1) The affirmative action program shall include details of proposed contracts in excess of Ten Thousand Dollars (\$10,000.00) to be awarded in connection with projects, programs, and activities funded in whole or in part through financial assistance under the Rail Acts, including contracts for professional and financial services, for the program period. The details shall include a description of the services or products which will be sought including estimated quantities, the location where the services are to be provided, the manner in which proposals will be solicited (e.g., cost plus fixed fee, fixed price), the manner in which contracts will be awarded (e.g., competitive or sole source). The plan shall also give details as to bidding procedures and information as to other qualifications for doing business with the applicant, recipient or contractor. Upon request by the applicant, recipient or contractor, any information submitted to the Administrator shall be kept confidential to the extent permitted by law.

(2) The affirmative action program shall review the procurement practices of the applicant, recipient or contractor for the full year preceeding the date of the submission of the affirmative action program and evaluate the utilization of minority business in its procurement activities. Such evaluation of utilization of minority business shall include the following:

(i) An analysis of awards of contracts to minority businesses during such year describing the nature of goods and services purchased and the dollar amount involved; and

(ii) A comparison of the percentage of awards of contracts to minority businesses (by number of contracts and by total dollar amount involved) to the total procurement activity of the applicant, recipient or contractor for said year.

(3) The affirmative action program shall set forth in detail the applicant's, recipient's or contractor's plan to insure that minority businesses are afforded a fair and representative opportunity to do business with the applicant, recipient or contractor (both in terms of number of contracts and dollar amount involved) for the program period. Such plan shall indentify specific actions to be taken to:

(i) Designate a liaison officer who will administer the minority business program;

(ii) Provide for adequate and timely consideration of the availability and potential of minority businesses in all procurement decisions;

(iii) Assure that minority businesses will have an equitable opportunity to compete for contracts, by arranging solicitation time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation of minority businesses who are potential contractors in preparing bid materials and in obtaining and maintaining suitable bonding coverage in those instances where bonds are required;

(iv) Maintain records showing that the policies set forth in this part are being complied with;

(v) Submit quarterly reports of the records referred to in subparagraph (iv) above in such form and manner as the Administrator may prescribe; and

(vi) Where appropriate because of prior underutilization of minority businesses, establish specific goals and timetables to utilize minority businesses in the performance of contracts awarded.

(d) Successor organizations. Where applicant, recipient or contractor is a successor organization, its affirmative action program shall review the hiring and procurement practices of its predecessor organizations.

#### Section 4. Equal Opportunity Clause

During the performance of this Agreement the Contractor agrees as follows:

(a) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this non-discrimination clause.

(b) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(c) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the Contractor's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(e) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the Subsidizer and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Agreement or with any of such rules, regulations, or orders, this Agreement may be canceled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) The Contractor will include the provisions of paragraphs (a) through (g) of this Section in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Subsidizer may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, That in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Subsidizer, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

STATE OF CALIFORNIA,  
City and County of San Francisco } ss.

I, M. Battle a Notary Public,  
State of California, duly commissioned and sworn, do certify that on this 9th  
day of March, 1979, I carefully compared the annexed copy of  
Lease Agreement dated as of December 20, 1978  
between BRAE Corporation and Michigan Interstate  
Railway Company ("Agreement")  
with the original S thereof,  
now in the possession of BRAE Corporation  
of San Francisco, State of California, and that the  
same is a full, true, and exact copy of said original "Agreement"

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal  
in the City and County of San Francisco the day and year  
in this certificate first above written.

M. Battle

Notary Public, State of California.

My Commission Expires 12/17/82

